IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 894 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SURAJIT MOHANJI KHANT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MS SADHANA SAGAR for Appellant(s) : 1,
MR KP RAWAL APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 28/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant has preferred this appeal

under Section 374 (2) of the Code of Criminal Procedure, 1973 and challenged the judgment dated 31-7-1999 passed by the learned Addl. Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No. 114 of 1998, convicting him for the offence punishable under Section 302 of the I.P. Code and u/s 135 of the Bombay Police Act and sentencing him to undergo life imprisonment.

2. The brief facts of the prosecution case are that deceased Chandrasingh was the brother of informant Vikramsingh Jagatsingh Rathod, residing at village Hathrol, Taluka Bhiloda, Dist. Sabarkantha, with his brother Vikramsingh and Bhammarsingh. They had agricultural lands in the sim of village known as “Ambano timbo” 1 ½ k.m. away on northern side of the village. There were agricultural lands of Mohanji Vaghaji Khant, Maganjl Jehaji and Kodarji Nanaji Khant and others surrounding the said agricultural lands. Before two days of the incident, there was quarrel between deceased Chandrasingh and the accused with regard to encroachment made on his agricultural land and the accused gave threat to the deceased that he would not

leave him and would beat him. On 5-9-1998 at about 12-15 a.m. one Takhatsingh Jeharsingh Rathod and Chandansingh Mansingh Rathod came to the house of Vikramsingh and informed him that there was quarrel between Chandrasingh and the accused and Chandrasingh was lying seriously injured in the field of Maganji Nanaji and the accused ran away after killing Chandrasingh. Therefore, Vikramsingh with the villagers and police made inquiry and found that Chandrasingh was lying in the field of Maganji with the injuries and was profusely bleeding. A blood stained knife was also lying there. It is the prosecution case that the accused with a view to take revenge of quarrel, inflicted injuries on the vital parts of the person of deceased Chandrasingh who succumbed to the injuries.

3. On the basis of the First Information Report given by Vikramsingh Jagatsingh Rathod offence was registered as I – CR No.125 of 1998 at Bhiloda Police Station and investigation was started. During the course of the investigation, dead body of Chandrasingh Jagatsingh Rathod was sent for postmortem and Panchanama of scene of offence,

inquest panchanama and panchnama of recovery of muddamal knife were drawn. The statements of the witnesses were recorded. The accused was arrested and arrest panchanama was drawn.

4. On completion of the investigation, charge sheet was laid before the learned J.M.F.C., Bhiloda, Dist. Sabarkantha for the offence punishable u/s 302 or the I.P. Code and u/s 135 of the Bombay Police Act. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Sabarkantha at Himatnagar and it was registered as Sessions Case No. 114 of 1998. Charge Exh. 5 was framed against the accused for the offences punishable u/s 302 of the I.P. Code and u/s 135 of the Bombay Police Act and the same was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence by prosecution the learned trial Judge explained to the accused the incriminating circumstances appearing against

him in the evidence. The accused denied having committed the office in his further statement recorded u/s 313 of the Code of Criminal Procedure, 1973 and stated that he has been falsely implicated in the offence and he does not know anything about the incident.

5. After hearing the learned A.P.P. for the State and the learned advocate for the accused, the learned trial Judge found the accused guilty for the charge levelled against him and convicted and sentenced him to undergo the imprisonment as mentioned hereinabove. Therefore, the accused has preferred this appeal challenging the impugned judgment and order of conviction of the trial court in this appeal.

6. We have heard learned advocate Ms. Sadhana Sagar for the appellant and learned A.P.P. Mr. K.P. Rawal, for the respondent – State at length and in great detail. We have also perused the judgment of the trial court as well as the record and proceedings of the case.

7. Learned advocate Ms. Sadhana Sagar for the

appellant submitted that there is no eye witness to the incident and the witnesses examined by the prosecution are the relatives of the deceased. Therefore, their evidence cannot be believed. She also submitted that the prosecution has not proved that the muddamal knife belonged to the appellant. Therefore, the learned trial Judge committed error in convicting the appellant. She further submitted that the deceased tried to chase the appellant with knife and on account of fall the deceased sustained fatal injuries. Hence, the appellant could not have been convicted for the offence of murder of Chandrasingh Jagatsingh Rathod. Therefore, the appeal deserves to be allowed and the appellant requires to be acquitted.

8. Mr. K.P. Rawal, learned A.P.P. vehemently opposed the appeal and submitted that there is qualitative evidence to implicate the appellant in the offence and the witnesses have given true account of the incident, and therefore, their evidence cannot be discarded simply because they are relatives of the deceased. The evidence indicates that except two witnesses there was no one nearby the

field, and therefore, their evidence should be accepted. The blood stains found on the muddamal knife and the clothes of the deceased as well as the clothes of the appellant were of the same blood group. Hence, link has been completed and the prosecution has proved the case beyond reasonable doubt against the appellant. Therefore, no interference is warranted in the impugned judgment and the appeal requires to be dismissed.

9. The prosecution case mainly rests on the evidence of P.W. 3 Chandansingh Mansingh Rathod, P.W. 4 Takhatsingh Jeharsingh Rathod and P.W. 1 Dr. Dalabhai Fusabhai Parmar,

10. In order to prove that death of Chandrasingh Rathod was homicidal in nature, the prosecution examined P.W. 1 Dr. Dalabhai Fusabhai Parmar at Exh. 9 who had performed postmortem. The evidence of this witness indicates that the deceased had sustained injuries as recorded in Column No.17 of Postmortem Report Exh. 11. The evidence also indicates that injuries No.1 and 2 were possible by a sharp cutting weapon knife and the external injuries were corresponding to

the internal injuries and the injuries were sufficient in the ordinary course of nature to cause death. In view of this evidence, it becomes clear that the injuries found on the dead body were possible by muddamal knife and the injuries were sufficient in the ordinary course of nature to cause death. Therefore, in our view, the prosecution proved beyond reasonable doubt that the injuries were homicidal in nature. The learned advocate for the appellant has not disputed that it was not a homicidal death.

11. The prosecution examined P.W. 2 Vikramsingh Jagatsingh Rathod, the brother of deceased Chandrasingh at Exh. 13 who gave first information report with regard to the commission of offence. The evidence indicates that he had received the information about the incident from P.W. 3 Chandansingh Mansingh Rathod and on receipt of the information about the incident, the witness went to the place of the incident and found that the dead body of his brother Chandrasingh was lying in the field of Maganji Nanji and the muddamal knife lying near the dead body. The witness, therefore, lodged F.I.R. with regard to the

commission of the offence. The witness gave the details of the incident in the F.I.R. wherein the informant implicated the appellant.

12. The prosecution examined P.W. 3 Chandansingh Mansingh Rathod at Exh. 15. It appears from the evidence of this witness that the witness and eye witness P.W. 4 Takhatsingh Jehsingh were returning from their field and when they reached near the field known as “Ambano timbo” they heard shouts for help, and therefore, they went towards the field of Mohanji Jehaji and saw the appellant running towards the village. Therefore, they shouted and asked him to stop but the appellant did not stop. Thereafter, the witness went at the place and found the dead body of Chandrasingh with knife injuries and profusely bleeding. Thereafter, they informed P.W. 3 Vikramsingh about the incident. It appears from the cross-examination of this witness that no other persons were present in the surrounding fields. The evidence also indicates that appellant's field is on the southern side of the place of the incident and the surrounding

fields belong to the family of the appellant. The evidence clearly indicates that the field of the deceased was near the field of the appellant and when the witness heard shouts, he with P.W. 4 Takhatsingh saw the appellant running away from the place of the incident and despite asking the appellant to stop, the appellant did not stop and when the witness went at the place of the incident they found Chandrasingh lying with the injuries and profusely bleeding. The appellant has not explained in his further statement the incriminating circumstances of his running away from the place of the incident, except denial. We find that evidence of Chandansingh has remained unshaken. His presence is established and there is no reason to doubt his version.

13. The prosecution examined P.W. 4 Takhatsingh Jeharsingh at Exh. 17 who was also returning home with P.W. 3 Chandansingh Mansingh. The deposition of this witness is similar to the deposition of P.W. 3 Chandansingh. The evidence of this witness indicates that the witness saw the appellant running away from the place of the incident

and noticed the dead body of Chandrasingh with injuries and profusely bleeding. The witness further noticed that the blood stained knife was lying near the place of the incident. His evidence has remained unshaken during cross-examination. We do not find any discrepancy in his evidence to doubt his version.

14. In view of above evidence, it is clear that P.W. Chandansingh Mansingh and P.W. 4 Takhatsingh Jeharsingh noticed the appellant running away from the place of incident and when they went to the place from where the appellant ran away, they found Chandrasingh lying with the injuries and the blood stained knife was also found near him. The evidence also indicates that there were no other persons at the nearby fields. It is true that P.W. 3 Chandansingh Mansingh Rathod and P.W. 4 Takhatsingh Jehsingh Rathod have not seen the offence being committed. But there is no explanation from the appellant as to why he ran away from the place of the incident on noticing the presence of these two witnesses. As discussed earlier, blood stained knife was also found near the deceased but no explanation to that effect is also given. This

evidence clearly indicates that the appellant after inflicting the injuries with muddamal knife to Chandrasingh ran away. Therefore, in our view, the muddamal knife belonged to the appellant. Therefore, the defence that the appellant was not present and was not aware about the incident cannot be believed.

15. The prosecution also examined P.W. 6 Jashwantsingh Devusingh Rathod at Exh. 18. According to this witness, on the previous day of the incident, deceased Chandrasingh met him on the road and told him that the appellant gave threats to kill him. There is no cross-examination with regard to this fact Therefore, it becomes clear that the appellant gave threats to deceased Chandrasingh on the previous day of the incident and Chandrasingh had told this fact to the witness.

16. The prosecution produced inquest panchanama at Exh.21. It indicates that the injuries were inflicted on the vital parts of the body. The prosecution also produced panchanama of arrest of the accused at Exh. 32 and examined P.W. 9 Dungarsingh Ramsingh

Rathod at Exh. 27. It appears from overall deposition of this witness that the shirt worn by the appellant was recovered by drawing panchanama Exh.32. It indicates that there were blood stained marks on the shirt. The evidence indicates that blood sample of deceased Chandrasingh was collected and sent to the F.S.L.. The F.S.L. report Exh.42 indicates that the blood group of the deceased was “A”.

17. F.S.L. Report Exh. 43 produced by the prosecution indicates that the muddamal shirt recovered from the appellant was bearing blood stained marks of Blood Group-A. The appellant has not offered any explanation as to how the blood stained marks of the deceased were found on his shirt. Therefore, in our view. the involvement of the appellant in the offence can legitimately be inferred.

18. The prosecution also produced panchanama in respect of clothes of deceased and muddamal knife recovered from the place of the incident and chappals of deceased at Exh. 26. All these articles were sent to F.S.L. for examination. The F.S.L. Report also

indicates that clothes of deceased and the muddamal knife and chappals of the deceased were having blood stained marks of Group-A.

19. The prosecution also examined Investigating Officer P.W. 14 Sureshchandra Keshavlal Patel at Exh. 39 who carried out the investigation. There is no much cross-examination to demonstrate that the investigation was not properly carried out.

20. As regards conviction for the offence punishable under Section 135 of the Bombay Police Act, the learned advocate for the appellant has not made any submissions. It appears that the prosecution produced necessary notification in that regard but it was not challenged. Therefore, it become clear that the appellant possessed the muddamal knife in contravention of the notification.

21. In view of above, we are of the view that the prosecution proved the charge against the appellant beyond reasonable doubt. The appellant has failed to point out any infirmity in the impugned judgment. Therefore, no interference is warranted in the impugned

judgment and hence the appeal requires to be dismissed.

22. For the foregoing reasons, the present appeal is dismissed and the judgment and order of conviction and sentence dated 31.07.1999 rendered by the learned Additional Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No. 114 of 1998 is confirmed. The muddamal be disposed of as directed by the trial court.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

/JVSatwara/